IN THE SUPREME COURT OF THE STATE OF DELAWARE

RORY BROKENBROUGH,	§	
	§	No. 432, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of the
	§	State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 0308021468
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 6, 2006
Decided: April 11, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 11th day of April 2006, upon consideration of the briefs of the parties and their contentions at oral argument, it appears to the Court that:

(1) Defendant-Appellant, Rory Brokenbrough appeals his conviction for assault third degree and conspiracy third degree as lesser included offenses of robbery first degree and conspiracy second degree; assault first degree and attempted robbery first degree. Brokenbrough claims that the Superior Court should not have answered "No" to a question from the jury on whether the required element of intentional conduct for assault first degree and attempted robbery required premeditation. Brokenbrough contends that the Superior Court could

have confused the jury and attenuated the required element of intention under the facts of the case. We conclude there is no merit to this argument and affirm.

(2) On August 24, 2003, Brokenbrough, Tyrell Thomas, and Brian Sadler went to the Captain Witherspoon pub to buy liquor. Thomas was walking to the pub in front of Brokenbrough. A white male, Dennis Nichols, exited the bar and walked toward the rear of the parking lot.

(3) Brian Sadler testified he heard the man say something, and when he turned back he saw Brokenbrough arguing with the white male. Sadler observed Brokenbrough hit the white male one time, and saw the man fall. Tyrell Thomas testified he saw Brokenbrough standing over a motionless white man in the parking lot that night but denied seeing any hitting.

(4) A resident of an apartment across from the Witherspoon, testified that she saw a black man hitting something on the ground of the parking lot. She described the man as tall, thin, young, and bearded. Brokenbrough had a beard. Jefferson saw the man holding a wallet, pull items out of the wallet, and then examine them before either keeping or discarding them.

(5) During deliberations, the jury encountered difficulty in determining Brokenbrough's culpability for the attempted robbery charge at the Witherspoon (Count IV). Count IV (attempted robbery first degree charge) alleged that Brokenbrough:

> did intentionally beat Dennis Nichols and go through his pockets, which acts under the circumstances as he believed them to be, constituted a substantial step in a course of conduct planned to culminate in his commission of the crime of Robbery First Degree…, by causing physical injury to a non-participant in the crime in the course of committing Robbery Second Degree with intent to compel said person to deliver up property in the manner set forth above.

(6) The jury sent a note to the Judge asking: "On Count IV, does 'intentionally' mean 'premeditated'? In other words, in Count IV, are we trying to prove that the defendant 'planned' the action?" The Superior Court told the bailiff to advise the jurors to read the definition of "intentionally" in the jury instructions. Subsequently, the jury sent another note asking: "Question – we are stuck on Count IV, please help. Answer yes or no to this question. On Count IV, does 'intentionally' mean 'premeditated'?" The note contained "yes" or "no" for the trial court to circle.

(7) The prosecutor, defense counsel, and the trial judge agreed that premeditation was not required for an intentional state of mind. However, defense counsel argued that a negative answer could confuse the jury and that the question should not be answered at all. Defense counsel also stated that providing the jury with a definition of "premeditated" would be an unnecessary supplement to the jury instructions. The Superior Court decided to answer the jury's question "No," because premeditation was not required to establish an intentional state of mind.

(8) Claims of error not raised below are reviewed for plain error.[1] In the present case, the defense did not request the Superior Court to define "premeditation." Accordingly, this Court will review the lack of a jury instruction defining "premeditation" for plain error.

(9) A jury instruction should be "reasonably informative … not misleading [and not] undermine … the 'jury's ability to intelligently perform its duty.'"[2] Under the facts of this case, the jury instruction was reasonably informative and not misleading. The trial judge's answer to the jury's question was legally correct and did not undermine the jury's ability to intelligently perform its duty. The answer given by the trial judge was not confusing because she previously defined "intention" as "the conscious object or purpose to engage in conduct of that nature or to cause that result." Moreover, in the response to the jury's first question, the Superior Court specifically emphasized that the jury should refer to the jury instructions for a definition of "intentional." The jury is presumed to have understood and followed the Court's instructions.[3] The trial judge's answer that premeditation was not required provided clarity without devaluing the element that Brokenbrough must have acted intentionally. We find no error by the trial judge in her response to the jury's inquiry.

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[1] *Del. Supr. Ct. R.* 8.
[2] *Green v. St. Francis Hospital, Inc.*, 791 A.2d 731, 741 (Del. 2002) (*citations omitted*).
[3] *Fortt v. State*, 767 A.2d 799, 804 (Del. 2001); *Fuller v. State*, 860 A.2d 324, 329 (Del. 2004).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice